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This opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

Ex parte THOMAS E. KENNEDY

OCT 1 1995

Appeal No. 95-4569
Application 08/060,180¹

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

ON BRIEF

Before MEISTER, ABRAMS and STAAB, *Administrative Patent Judges*.
MEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

Thomas E. Kennedy (the appellant) appeals from the final rejection of claims 1 and 2. Claims 4 and 6-8, the only other claims present in the application, stand allowed. We reverse.

The appellant's invention pertains to a multiple glazed door or window unit having a pair of spaced panes and an edge seal gasket assembly. Independent claim 1 is further illustrative of the appealed subject matter and a copy thereof, as it appears in

¹ Application for patent filed May 7, 1993.

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the appendix to the appellant's brief, is appended to this opinion.

The reference of record relied on by the examiner is:

Kaspar et al. (Kaspar)	5,255,473	Oct. 26, 1993
		(filed April 24, 1992)

Claims 1 and 2 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kaspar. It is the examiner's position that

Kaspar et al. teach the use of an edge seal gasket and a pair of spaced panes. As seen in Fig. 14, the combination comprises spacer means 105 located between panes 101 and 102 inset from the edges of the panes, a resilient gasket means or wire 162 engaging the spacer in a cavity between the spacer and edge of the panes and a sealant means or adhesive 110 filling the cavity. (see final rejection, page 2)

In response to the appellant's contention that the wire 162 of Kaspar cannot be considered to be a resilient gasket means, the answer states

[t]he wire or gasket means (162) of Kaspar seals the hole in the sealant formed by the wire itself. Removal of the wire would create a hole in the sealant. Although this appear[s] to be circular reasoning (the wire seals the hole that is created by the use of the wire), the mere use of "a gasket means" in the claim without any further limitations on its sealing connection or function allows anticipation of the claims by Kaspar. Appellant's combination panes and gasket is stated in the specification as being possibly used in refrigerators or conventional multi-glazed doors. But, the invention is only the combination of a pair of glass panes, a spacer means, a resilient gasket means and sealant means. There is no recitation in the claims that the gasket means is intended to seal the

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edge of a refrigerator or contact another gasket to form an air tight seal. (see answer, pages 3 and 4; emphasis in original)

Even if we were to agree with the examiner that the wire 162 of Kaspar can be considered to be "resilient," we cannot agree that this wire can be considered a "resilient gasket means" as set forth in independent claim 1. While it is true that the claims in a patent application are to be given their broadest reasonable interpretation **consistent with specification** during prosecution of a patent application (*see In re Zletz*, 893 F.2d 319, 13 USPQ2d 1320 (Fed. Cir. 1989)) and limitations from a pending application's specification will not be read into the claims (*see Sjolund v. Musland*, 847 F.2d 1573, 6 USPQ2d 2020 (Fed. Cir. 1988)), it is also well settled that terms in a claim should be construed as those skilled in the art would construe them (*see Specialty Composites v. Cabot Corp.*, 845 F.2d 981, 6 USPQ2d 1601 (Fed. Cir. 1988) and *In re Johnson*, 558 F.2d 1008, 194 USPQ 187 (CCPA 1977)).

Here, according to the appellant's specification, the edge seal gasket assembly

allows a multi-glazed window or door to support an edge seal gasket as an integrated part of the edge seal assembly. With the edge seal gasket incorporated into the edge seal assembly, this invention eliminates the need for any additional molding or frame work. The edge seal gasket assembly includes an elongated flange gasket, which is preferably securely fitted into the spacer.

* * *

Edge seal gasket assembly 20 can be used with any type of multi-glazed door and is not limited to any particular embodiment of multi-glazed unit. Edge seal gasket assembly 20 is shown in Fig. 3 used to provide an air tight edge seal between a hinged or sliding multi-glazed door 10 and the sides or frame 4 of an insulated refrigerator case 2. (see pages 1-3)

On the other hand, Kaspar in Fig. 14 discloses a refrigerator door assembly which includes glass panes 101-103 separated by spacers 109 which are inset from the edges of the panes so as to define a cavity between the spacers and the pane edges. In order to provide a vapor seal the cavity is filled with a sealant 109 which may be a polysulfide adhesive 110 (see column 7, lines 5-13). For the purpose of keeping the outermost pane 101 in a "condensation free condition" Kaspar provides an electrically conductive coating 160 on pane 101 which is connected via bus bar 161 and a wire lead 162 to an electrical source (see column 9, lines 39-48). While this electrical wire 162 is depicted in Fig. 14 as extending both through and "outwardly from" the sealant-filled cavity, Kaspar neither states that the electrical wire 162 performs a sealing function nor does it even appear that the electrical wire has the capability of performing such a function. We can think of no circumstances under which the artisan, consistent with the appellant's specification, would construe the electrical wire 162 of Kaspar to correspond to the claimed "resilient gasket means."

As to the examiner's contention that the "wire or gasket means (162) of Kaspar seals the hole in the sealant formed by the wire itself" due to the fact that "[r]emoval of the wire would create a hole in the sealant," we observe that the Random House dictionary² defines "gasket" as -- a rubber, metal, or ring, for packing a piston or placing around a joint to make it watertight --. The examiner's position that the wire of Kaspar can be considered a "gasket" is tantamount to stating that the "piston" or the "joint" in this dictionary definition can be considered to be the gasket because the removal of the piston or joint would create a "hole" which would otherwise be sealed. In our view, such a position expands the meaning to be attributed to the term "gasket" beyond all reason.

Noting that anticipation under Section 102 is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention (*see In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990) and *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 221 USPQ 385 (Fed. Cir. 1984)), we will not sustain the examiner's rejection of claims 1 and 2 under 35 U.S.C. § 102(b).

² The Random House Dictionary of the English Language, Second Edition-Unabridged, published by Random House Inc., New York, N.Y.

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The decision of the examiner is reversed.

REVERSED

~~JAMES M. MEISTER~~
Administrative Patent Judge

NEAL E. ABRAMS
Administrative Patent Judge

LAWRENCE J. STAAB
Administrative Patent Judge

BOARD OF PATENT
APPEALS AND
INTERFERENCES

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APPENDIX

1. In combination an edge seal gasket assembly and a pair of spaced panes forming a multiple glazed door or window unit comprising:

spacer means located between said panes for separating said panes, said spacer means being inset from corresponding edges of said panes to define a cavity between said spacer means and said pane edges,

a resilient gasket means having a first part within said cavity and a second part extending outwardly from said cavity, and

sealant means filling said cavity around said gasket means first part for sealing said panes together and securing said gasket means within the cavity.